

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HEAVEN DAY PROSSER,
on behalf of S.M.T., a minor,

Plaintiff,

v.

1:14-CV-1202
(GTS/WBC)

CAROLYN W. COLVIN
Acting Comm'r of Soc. Sec.,

Defendant.

APPEARANCES:

OF COUNSEL:

LEGAL AID SOC'Y
OF NORTHEASTERN NEW YORK
Counsel for Plaintiff
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Saratoga Springs, NY 12866

MARY M. WITHINGTON, ESQ.

U.S. SOCIAL SECURITY ADMIN.
OFFICE OF REG'L GEN. COUNSEL
– REGION II
Counsel for Defendant
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New York, NY 10278

JASON P. PECK, ESQ.

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this Social Security action filed by Heaven Day Prosser (“Plaintiff”) on behalf of her son, S.M.T., against the Commissioner of Social Security (“Defendant” or “the Commissioner”) pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are (1) the Report and Recommendation of United States Magistrate Judge William B. Mitchell Carter, recommending that Plaintiff’s motion for judgment on the pleadings be denied, and that Defendant’s motion for judgment on the pleadings be granted, and (2) Plaintiff’s objections to the

Report and Recommendation. (Dkt. Nos. 15-16.) For the reasons set forth below, the Report and Recommendation is accepted and adopted.

I. PLAINTIFF’S OBJECTIONS

Generally, Plaintiff makes two arguments in objection to Magistrate Judge Carter’s Report and Recommendation. First, Plaintiff argues that objective medical evidence of record supports a finding that S.M.T.’s asthma meets or equals Listing 103.03. (Dkt. No. 16 at 2-4.) Second, Plaintiff argues that the ALJ failed to find that S.M.T. had (1) a marked limitation in the domain of interacting and relating with others (because his asthma and allergies severely preclude his ability to play with other children in all outdoor activities and in indoor activities requiring extended physical exertion), and (2) a marked limitation in the domain of health and physical well-being (based on his frequent visits to doctors and school absences). (*Id.* at 4-6.)

II. APPLICABLE LEGAL STANDARD

A district court reviewing a magistrate judge’s Report and Recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Parties may raise objections to the magistrate judge’s Report and Recommendation, but they must be “specific written objections,” and must be submitted “[w]ithin 14 days after being served with a copy of the recommended disposition.” Fed. R. Civ. P. 72(b)(2); *accord*, 28 U.S.C. § 636(b)(1)(C). “A judge of the court shall make a de novo determination of those portions of the [Report and Recommendation] . . . to which objection is made.” 28 U.S.C. § 636(b)(1)(C); *accord*, Fed. R. Civ. P. 72(b)(2). “Where, however, an objecting party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error.” *Caldwell v. Crosset*, 9-CV-0576, 2010 WL 2346330, at * 1 (N.D.N.Y. June 9, 2010) (quoting *Farid v. Bouey*, 554 F. Supp. 2d 301, 307 [N.D.N.Y. 2008]) (internal quotation marks omitted).

III. ANALYSIS

The Court finds that Plaintiff's objections merely restate arguments presented in her initial brief. (*Compare* Dkt. No. 16 with Dkt. No. 10.) Therefore, the Court reviews the portions of Magistrate Judge Carter's Report and Recommendation addressed in Plaintiff's objections for clear error only. After carefully reviewing the relevant filings in this action, including Magistrate Judge Carter's thorough Report and Recommendation, the Court can find no clear error in the Report and Recommendation. (Dkt. No. 15.) Magistrate Judge Carter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (*Id.*)

ACCORDINGLY, it is

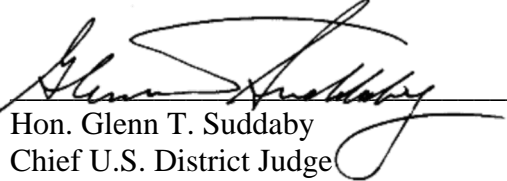
ORDERED that Magistrate Judge Carter's Report and Recommendation (Dkt. No. 15) is

ACCEPTED and **ADOPTED** in its entirety; and it is further

ORDERED that the Commissioner's determination is **AFFIRMED**; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED**.

Dated: June 23, 2016
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge